

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201243008**
Release Date: 10/26/2012

Third Party Communication: None
Date of Communication: Not Applicable

Index Numbers: 1361.00-00, 1361.05-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-111726-12
Date: June 21, 2012

LEGEND

X =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year =

State =
1

State =
2

Dear :

This responds to a letter dated March 15, 2012, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to elect to treat A, B, and C as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

The information submitted states that X formed as a State 1 limited liability company on Date 1 and filed an S corporation election effective for its taxable year beginning Date 2. A formed as a State 1 limited liability company and filed an S corporation election effective for its taxable year beginning Date 3. B incorporated under the laws of State 2 on Date 4. C incorporated under the laws of State 2 on Date 5. B and C each filed an S corporation election effective for its taxable year beginning Date 6. Since Date 3, X has owned all of the stock of A and has intended to treat A as a QSub effective Date 3. Since Date 6, X has owned all of the stock of B and C and has intended to treat B and C as QSubs effective Date 6. However, X failed to timely file Forms 8869, Qualified Subchapter S Subsidiary Election, for A, B, and C.

LAW AND ANALYSIS

Section 1361(b)(3)(A) provides that except as provided in regulations prescribed by the Secretary, for purposes of Title 26 – (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election for a subsidiary by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Consequently, we grant X an extension of time of one hundred twenty (120) days from the date of this letter to elect to treat (i) A as a QSub effective Date 3, and (ii) B and C as QSubs effective Date 6. Each election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to each election.

This ruling is contingent upon the filing within 120 days of this letter any and all required Federal income tax returns from Year to the present consistent with the requested relief.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is a valid S corporation, or whether A, B, and C are eligible to be QSubs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes